IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3152 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAGDISHCHANDRA PANNALAL BORIWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3152 of 2002

MR HR PRAJAPATI for Petitioner No. 1

Mr.AY KOGJE, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 19/06/2002

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Prajapati appearing for the petitioner, Mr. A.Y. Kogje, ld. AGP for respondent nos. 1 to 3 & Ms. PJ Davawala, ld.Central Govt. Standing Counsel for respondent no.3.

2. The petitioner has challenged the legality and validity of the detention order passed by the District Magistrate, Surat on 3.2.2002 in exercise of the powers vested in her by Sub-section 2(a) of Section 3 of The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as PBM Act). As per the detaining authority, the petitioner is acting prejudicially to the maintenance of supply of essential commodity like Kerosene (blue) -essential commodity for the community and, therefore, he is detained. The petitioner is a licence-holder and was authorised to sell kerosene (blue) from his approved Retail Shop.

3. According to ld. counsel Mr. Prajapati for the petitioner, the order of detention is bad on various grounds and, therefore, the same requires to be quashed and set aside. The order of detention (Annex.A) is challenged on number of grounds, however, during the course of oral submissions, ld. counsel Mr. Prajapati has mainly focussed his arguments on two grounds i.e. ground (P) & (R) of para-4 of the petition. It is contended that there is great delay in passing the order of detention though the relevant material was very well with the sponsoring authority on 11.10.2002 when alleged stock of kerosene (blue) was seized and the statement of the present petitioner was recorded. Sample of kerosene was sent to FSL for analysis and FSL Report was available to the authority on 26.12.2001. Even than, for the reasons best known to the sponsoring authority as well as to the detaining authority, detention order was not passed till 2nd February 2002. The order of detention is passed on 3rd February, 2002. Thus, there is great delay in passing the impugned order of detention. It is further submitted that the delay caused in passing the order of detention could have been explained by the State or the detaining authority in reply affidavit, but on scrutiny of the affidavit in reply, it transpires that this ground has not been assailed specifically nor any explanation has been offered for the delay caused. So, the order of detention can be quashed solely on this ground.

4. Ld. counsel Mr. Prajapati, however, submitted that ground (P) of para-4 of the petition is also relevant and, therefore, it would be proper to deal with the same. It is argued that order of detention suffers from total non-application of mind because detaining authority, while recording subjective satisfaction, has stated that licence of the petitioner has been suspended for a period of 90 days, but even than the petitioner is

likely to continue his illegal activities by obtaining stay from the competent court. Pointing out Clause (11) of The Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, it is stated that the detaining authority itself is the appellate authority and when a statutory appeal has been provided under the Statute, there is no question of approaching the competent Court and, therefore, the High Court, at least, would not exercise the writ jurisdiction vested in it. This case, either can be said to be a case of non-application of mind or the case of subjective satisfaction recorded on surmises. So, on both these counts, the order of detention requires to be turned down as per the settled legal proposition.

5. In view of set of facts stated above and settled legal position on the point, this petition is allowed. Impugned order of detention dated 3.2.2002 passed by the District Magistrate, Surat against the detenu is hereby quashed and set aside and detenu Jagdishchandra Pannalal Boriwal is hereby ordered to be set at liberty forthwith if not required to be detained in any other case. Rule is made absolute.

Direct service is permitted.

19.6.2002 [C.K. BUCH, J]

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